

ISSUE DATE: September 25, 1995

DOCKET NO. E-002/CN-95-865

ORDER GRANTING EXEMPTION FROM CERTAIN CERTIFICATE OF NEED FILING  
REQUIREMENTS AND VARIANCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the 1995 Application of  
Northern States Power Company for a  
Certificate of Need for Approximately 100  
Megawatts of Wind Generation

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**PROCEDURAL HISTORY**

In 1994, the Minnesota legislature enacted legislation dealing with Northern States Power Company's (NSP's) storage of nuclear waste at its Prairie Island nuclear generating plant. Among other things, that legislation required NSP to add 225 megawatts (MW) of wind power by December 31, 1998 and another 200 MW by December 31, 2002. Minn. Stat. § 216B.243. NSP's ability to implement the dry cask storage authorized by the legislation is contingent upon the Company's satisfaction of the wind power requirements.

On October 6, 1994, the Commission issued its ORDER GRANTING EXEMPTION FROM CERTAIN FILING REQUIREMENTS AND VARIANCE in Docket No. E-002/CN-94-795. In that Order the Commission granted NSP most of its requested exemptions from certificate of need filing requirements for the 100 MW of wind known as Phase II. NSP received its certificate of need for the Phase II project on April 19, 1995.

On August 24, 1995, NSP filed a petition seeking exemption from certain certificate of need filing requirements for a further 100 MW of wind known as Phase III. NSP also requested a variance from Minn. Rules, part 7849.0200, subp. 6, which provides that a request for exemption from any part of the certificate of need application process must be filed at least 45 days before the application is filed.

On September 5, 1995, the Department of Public Service (the Department) and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed comments in favor of the Company's petition.

On September 14, 1995, the petition came before the Commission for consideration.

**FINDINGS AND CONCLUSIONS**

## **I. NSP’S REQUEST FOR EXEMPTION FROM FILING REQUIREMENTS**

NSP requested the following exemptions from certificate of need filing requirements:

- Minn. Rules, part 7849.0240, subp. 1. This rule requires a summary of the major factors that justify the need for the proposed facility. NSP requested an exemption because the need for, type of, and timing of the proposed wind project are already determined by statute. NSP would provide a summary of the justification for the proposed facility.
- Minn. Rules, part 7849.0250(B) and (C). These subsections require a discussion of the availability of alternatives to the facility. NSP requested an exemption because a discussion of non-wind alternatives would not be productive. NSP would, however, describe and discuss different wind turbine sizes and types.
- Minn. Rules, part 7849.0250(E). This rule requires the utility to file such other information about the proposed facility and each alternative as may be relevant to a determination of need. NSP requested an exemption from this general requirement with two exceptions: NSP would discuss how the proposed project will integrate into its system, and the extent to which the project will meet system needs.
- Minn. Rules, part 7849.0270. This rule provides that applications shall contain demand and forecast information. NSP requested an exemption because the wind generation is not being added in response to system demand.
- Minn. Rules, part 7849.0280. This rule requires the applicant to describe the ability of its existing system to meet the demand for electrical energy contained in the forecast. NSP requested an exemption because the proposed facility is not need-based, and the statute precludes choosing existing generation over the proposed facility.
- Minn. Rules, part 7849.0290. This rule requires a detailed description of demand side management options. NSP requested an exemption because construction of the proposed facility cannot be avoided through the application of demand side management.
- Minn. Rules, part 7849.0320. This rule requires the inclusion of data on the facility’s environmental impact. NSP requested exemption from all but three subsections (A, I, and K) because the other subsections require information not applicable to a wind facility.
- Minn. Rules, part 7849.0340. This rule requires the applicant to address the alternative of no facility. Because construction of the wind facility is statutorily mandated, NSP requested exemption from this provision.

## **II. NSP’S REQUESTED VARIANCE**

NSP requested a variance from Minn. Rules, part 7849.0200, subp. 6, which requires that any request for exemption from a certificate of need filing requirement be submitted at least 45

days before the certificate application is filed. NSP stated that it wished to file its certificate of need application as soon as possible after receiving Commission direction regarding its exemption requests. NSP explained that it needed to proceed quickly with the bidding and construction processes in order to satisfy the legislature's rigorous implementation schedule.

### **III. COMMISSION ACTION**

#### **A. The Request for Exemption**

The Commission agrees with the Department and the RUD-OAG that NSP's exemption request is consistent with the exemptions the Commission granted for Phase II. The Company's list of requested exemptions conforms to the Commission's findings in the Phase II Order of October 6, 1994.

Under NSP's proposal, it will provide the summary information to justify the need for the facility, a discussion of the various wind turbine sizes and types that it might use, information on integration of the facility into the system, and relevant environmental impacts. Given the special circumstances of NSP's statutorily mandated implementation of wind generation, this information will be sufficient to fulfill the intent of the certificate of need review.

The Commission notes that NSP's acquisition of the wind resources will remain subject to Commission review in the Company's competitive bidding process, the integrated resource plan process, and future rate case proceedings.

For these reasons, the Commission will grant NSP its requested exemptions from certificate of need filing requirements. The exemptions should not be construed by NSP or by any other party as precluding discovery or other requests for information at a subsequent point in the certificate of need process.

#### **B. The Request for Variance**

The Commission finds that NSP's request for a variance from Minn. Rules, part 7849.0200, subp. 6, which requires a 45 day period between a request for exemption and the filing of a certificate of need application, should be granted. The request fulfills the three criteria for a variance found in Minn. Rules, part 7829.3200. Strict enforcement of the rule would impede NSP's ability to adhere to the statutory schedule for implementation of wind generation. Because the need for the wind facility has been examined and determined in the legislative process, granting the variance would further the public interest. Granting the variance would not conflict with standards imposed by law.

The Commission will grant NSP a variance from Minn. Rules, part 7849.0200, subp. 6, thus allowing the Company to file a certificate of need application before the 45 day period from its exemption request has expired.

### **ORDER**

1. The Commission grants NSP's request for exemptions from certificate of need filing requirements, contingent upon NSP's filing the information it proposed in its filing, as set out in Section I of this Order.
2. The Commission grants NSP a variance from Minn. Rules, part 7849.0200, subp. 6, thus allowing the Company to file its certificate of need application before the 45 day period from its exemption request has expired.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)